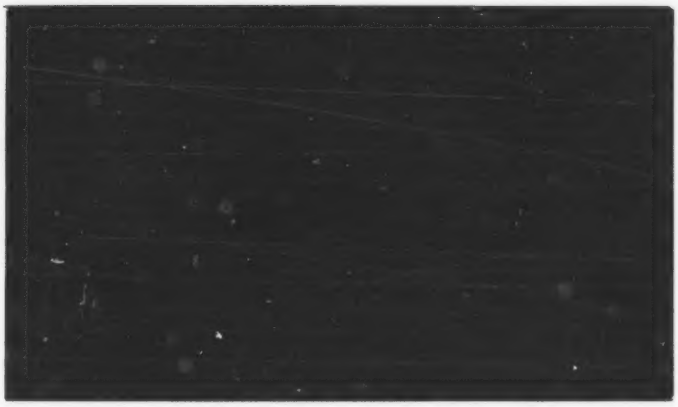
Nova Scotia
Advisory Council
on the Status of
Women

Conseil consultatif
sur la condition
féminine en
Nouvelle-Écosse

An agency of the
Province of Nova Scotia



Submission to the
Nova Scotia Working Committee
on the Constitution

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Nova Scotia Advisory Council on the Status of Women
P.O. Box 745
Halifax, Nova Scotia
B3J 2T3
(902) 424-8662 / (800) 565-8662

92-02575/

Introduction

The Nova Scotia Advisory Council on the Status of Women welcomes this opportunity to address the Nova Scotia Working Committee on the Constitution. Before beginning our general discussion of the issues that we believe are important to women in this round of constitutional consultation, we would like to bring to your attention the concern of many women's groups in Nova Scotia regarding the time frame allotted for formally responding to this working committee. Many women's groups do not have the resources to produce a submission based on the views of their membership in the amount of time this committee has set aside to hear the concerns of Nova Scotians.

The issues are complex and it is very difficult to determine what is best for women at the regional, provincial and federal levels. Women need to have the relationship between the abstract language contained in the constitutional proposals and its impact on the reality of our lives more clearly delineated, and to voice our perspective in a way which is heard by politicians.

It is important that women's voices are heard here in Nova Scotia, a well as during the Citizen's Forum recently initiated by the federal government. We hope that you will make every effort to ensure that women and other special groups have ample opportunity to be heard. Equality for women and men must include the opportunity for women to have an equal voice in constitution-making.

Historically, women have been excluded from formal input into the constitutional process, although this has not prevented many women from making their views heard and lobbying for legislative and constitutional changes which would ensure equality to women-as-a-group. We must ensure that the gains women have made towards equality are not undermined by any new proposals in the current round of constitutional amendments. Women have less economic and political power, greater responsibility for childcare and family life, and are more at risk in crimes of sexual assault and domestic violence. In this context, we have several areas of concern that have a particular relevance for women, namely, the inclusion of property rights in the Charter, the unclear status of sections 15 and 28 of the Charter in relation to other protections, the "notwithstanding clause," and the division of federal and provincial powers.

Property Rights

The intention behind the inclusion of property rights in the new federal proposals is confusing at the least. Will the protection of property rights serve to protect the environment or to allow property owners greater licence to pollute? Will such protection undermine women's right to matrimonial property? Will its jurisdiction extend to the right of employers or property owners to hire or rent to certain groups of individuals and not others? Will corporations be able to argue that their economic interests are constitutionally protected? What implications would this clause have for Native land claim settlements? Would property rights override equality rights, or would the courts seek a dubious balance between the two?

From experience, it is fair to assume that since women are not generally property owners (in the most unrestricted sense of the word), they are less likely to benefit from this protection, and may very well be harmed by it. As we have seen from the application of Section 15 of the Charter[1], the intention of the protection may be very different from the way that it is interpreted in the courts. Even with an expanded definition of property rights, the protection would still work in favour of those who could afford to make the argument. There is too much at stake here. Canadians should not allow this section to stand without a public discussion of the issues, based on a clear interpretive clause formulated by policy makers.

Federal-Provincial Powers

A strong federal government is necessary to ensure the continuation or future implementation of social programs on a national basis. With responsibility for issues such as housing and job training handed over to the provinces, we will doubtless experience considerable variation in the quality of programs and access to services from province to province.

Individual provinces have the right to opt out of federal-provincial cost shared programs. The approval of at least seven provinces representing fifty percent of the population is necessary in order to introduce a "national" program in the first place. In addition, the new federal proposals provide for the creation of a new regulating body -- the Council of the Federation -- which must approve all new social programs. These three factors will

[1] Charter arguments under Section 15 have for the most part been made by men claiming sex discrimination.

combine to create an erosion of consistent social, health care and post-secondary education programs.

This position is generally supported because of the provinces' desire for greater control over taxation and spending, and to enable them to implement programs which are regionally relevant. It is our view, however, that regional sensitivity can be accommodated during federal-provincial consultation prior to the establishment of a particular national program, without jeopardizing the program's quality, consistency, or accessability. Certainly, initiatives such as a national child care strategy would be extremely unlikely under the proposed constitutional amendments. Divorce, health insurance coverage for certain medical procedures such as abortion, extra-billing, and child custody arrangements are all areas which could be handled differently from province to province if decentralization should occur.

Conclusion

In our view, those concepts we as Canadians consider vital to our sense of nationhood include the support of multiculturalism, the preservation of universal social services, and the development of new programs to promote individual and community well-being. Clearly, we do not share the same language, culture, values, or interests with all other Canadians, other than an interest in unity, economic equality, equality of access to services, and recognition of and respect for our differences. This is precisely where our strength lies -- in our diversity. The aim, therefore, of a new Canadian constitution must be to create a structure whereby our individual, cultural and regional interests and rights are protected, along with the rights of other individuals, cultures, and regions.

All of our recommendations can be extrapolated from these general principles of recognition and respect. Canadians need to be reassured that conferring special status on one group does not require that another group lose certain privileges: naming Quebec a distinct society does not negate the distinctiveness of the North or of the Atlantic region; providing for Native self-government and a Native justice system does not mean that our present structure of government or justice system need suffer as a consequence; promoting official bilingualism does not limit the rights of English Canadians; assuring women equality in Canadian society does not mean that men will lose rights.

Public hearings and referenda are only a greater reflection of the democratic process if numbers of the general public are both sufficiently informed and motivated to make their views known. Canadians, having little faith in individual politicians, political parties, elected governments, or the constitutional process, are afraid they will lose jobs, lose security, lose culture, lose rights through this process of constitutional debating. Given the history of attempts at constitutional reform in this country, a demonstration that our elected representatives listen and act on what they hear is vital to this process.

Recommendations

The Nova Scotia Advisory Council on the Status of Women recommends:

1) that, as a matter of utmost priority, outstanding Native land claims be settled through a special forum set up in consultation with the Native community;
2) that aboriginal self-government be defined in the constitution in consultation with the Native community;

3) that the Government of Nova Scotia support the inclusion of two official languages in the constitution, and make a commitment to Acadians in Nova Scotia to provide the minority language rights that are spelled out in the Canadian Charter of Rights and Freedoms;

4) that, based on the reality of Quebec's francophone majority, its own legal system, tax system, pension administration, immigration policy, and education, social assistance and health program differences, the special place of Quebec in Canada be recognised in the Constitution;

5) that the process of regional representation in the House of Commons be reviewed to determine whether it is effective and equitable;

6) that, at the very least, Senate reform would provide for a fully elected, efficient, equitable, and much smaller Senate; and further, that serious consideration be given to the elimination of the Senate entirely, since its intended function as a "counterweight" to the House of Commons has not been fulfilled;

7) that the federal government continue to set and provide for national standards in education, health care and social services, to ensure that all Canadians enjoy the same access to services regardless of geographic region. This does not preclude a regional sensitivity in the provision of such services;

8) that the amending process of the Constitution be required to have an extensive public consultation component; and that this consultation process must ensure that the voices of women and members of other historically excluded groups are heard;

9) that the "notwithstanding clause" (Section 33 of the Constitution Act, 1982), allowing elected representatives to override the Charter in certain instances, be eliminated from the constitution;

10) that the Charter of Rights and Freedoms include the protection of freedom of sexual orientation;

11) that, since little is known about the impact the inclusion of the protection of property rights in the constitution would have on Canadian women, this amendment should not be introduced unless an in-depth study were conducted that met with favourable public review (with particular attention paid to the views of those who are economically disadvantaged because of historical, systemic discrimination);

12) that nothing provided for in the Constitution, including aboriginal self-government and Quebec as a distinct society, should override the sex equality rights provisions of the Charter; and that this be written into the new Canadian Constitution.